Ambiguity and Validity of Territoriality Principle in Intellectual Property Law (summary)

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In the field of intellectual property law, it has long been argued that the so-called Territoriality Principle governs international disputes. Such idea has been widely-shared, and the Japanese Supreme Court has recognized its significance as well, at least with regard to patent rights. Nevertheless, it seems that its holdings have not attracted enough support. The meanings, legal basis and scope of the Territoriality Principle are still so defferently understood by people that there has been heated controversy especially over its implications in choice of law, mainly in the context of cross-border patent infringement disputes. In such context, this article focuses on the ambiguity and validity of the Territoriality Principle from the perspective of private international law. It examines whether the Territoriality "Principle" really exists with some kind of special significance and, if any, what it means and how it works in choice-of-law process.

Chapter 1 outlines the current situation of legal doctrine and case law in Japan to cast light on the highly ambiguous nature of the Territoriality Principle. In fact, the Principle is applied in various contexts with various meanings and on various bases. According to the prevailing view, the Territoriality Principle that has appeared in cross-border IP disputes is two-faced in nature. It is said that while it eventually means the territorial limitation of effect of IP right, it permits the application of *lex protectionis* to certain IP matters at the same time. On the other hand, some commentators take quite different approaches such as to consider the Territoriality Principle in IP law as the same as territoriality of public law. This chapter also shows that what the Territoriality Principle implies in choice of law depends on how it is understood.

The second chapter discusses the source, meanings and validity of the Principle. These days, some scholars cast doubt on the significance of the Principle especially for limitation on effect of the right allegedly imposed by the Principle on the ground that there is no apparent statutory basis for such limitation and that it would prevent effective protection for cross-border transactions. In the

author's opinion, however, the territorially limited character of IP right cannot be explained without referring to the territorially limited scope of application of national IP law, considering that right is established as a kind of a consequence of application of law. Thus, the examination is to begin with making an attempt to verify the territorial limitation not of the effect of IP *right* itself but of the (territorial) scope of application of IP *law*, making reference to IP-specific characters and provisions of some international conventions.

Chapter 3 aims to illustrate how we should treat the territorial character of IP law in the conflicts rules. This is carried out through the following discussions: (1) whether or not Territoriality of IP law precludes application of foreign IP law, (2) whether or not both domestic and foreign IP law can be applied as an "applicable law" designated by bilateral conflicts rules of the forum country, and (3) what kinds of issues can be considered to be out of reach of the Principle and which would be regulated by the applicable law designated through bilateral conflicts rules——in other words, how we should demarcate the scope of subject matters of IP law whose territorial scope is limited.